PLEADING & CIVIL PROCEDURE I
PROFESSOR HSIEH
SHORT ANSWER & ESSAY

December 1, 2008
180 minutes
LIMITED OPEN BOOK

STANDARD EXAMINATION RULES GOVERN THIS EXAMINATION

PROFESSOR'S INSTRUCTIONS

1. You may use the casebook, rules supplement, Glannon, dictionaries, your own printed outlines and notes, and any other materials not stored on your computer. You may not use commercial outlines. Beware: You will not have time to consult materials extensively and still compose complete answers.

2. Part I, one hour, contains 6 short answer questions, each worth 10 points. Part II, two hours, contains a hypothetical with 4 essay questions, worth 10 to 45 points, for a total of 105 points. Credit for each answer is proportional to the suggested time. You have an extra "ungraded" 15 minutes of time to read Part II. Answer the questions in any order you want, but be sure to number your answers and any subparts clearly. Budget your time!

3. For the short answer questions, answer the call(s) of the question directly and briefly explain your reasoning in several sentences. I will penalize and disregard words in excess of the 70 word limit. Use your time to fully consider your answer but then focus your writing precisely on the dispositive legal standard(s), facts, and/or relevant arguments.

4. For the essays, respond fully to the call of the question on the facts provided. Show fully your thought process. Identify as precisely as possible all applicable legal standard(s); state and elaborate each governing standard and its elements/factors, sorting and analyzing all relevant facts in light of each element, and state and justify your conclusions for each element. Resolve all issues and elements within the call of the question, devoting more discussion to dispositive and conflicting rules and facts. If you believe that essential facts are absent, briefly identify what additional information you would require and why. Do not invent facts.

5. Identify your exam or bluebooks ONLY by your Blind Grading Identification number. DO NOT WRITE YOUR NAME anywhere. If you type, put your BGID on each page, and number each page. Use at least 12 point font and 1" margins on all sides. If you handwrite, put your BGID on each bluebook, and number each book, e.g., "1 of 2." Use ink and write only on one side of the page.

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EXAM BEGINS

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NEXT PAGE
PART I: SHORT ANSWER QUESTIONS

(Suggested time: 60 minutes for 6 questions at 10 minutes and 10 points per question)

Please answer each question directly, and briefly support your answer in no more than 70 words per question.

Question 1
Smith, a resident of N.D. CA, files suit for breach of contract against Jones, a resident of the N.D. CA, and GenCorp, a business incorporated under the laws of CA with its principle place of business in NV. The contract called for the construction of an office tower in Dubai, United Arab Emirates, from materials procured in China. What, if any, are proper federal court venue(s) and why?

Question 2
Three years after an injury on a ferry boat, Passenger files suit alleging negligence against Carrier, a New York business. Passenger files in federal court in her home state of New Mexico, despite clauses in the applicable contract dictating New York as the choice of law for all disputes arising from the Carrier’s services and despite the fact that New York’s statute of limitations for Carrier’s negligence is one year. Although properly served, Carrier did not appear in the District Court, D.NM, and Passenger won a default judgment under FRCP 55.

When Passenger legally attaches Carrier’s assets in New York State to execute her judgment, may Carrier challenge the default judgment for lack of personal jurisdiction? If Passenger prevails on this issue, may Carrier challenge the merits of the judgment based on an affirmative defense of statute of limitations?

Question 3
Article III, section 2 of the U.S. Constitution grants the federal courts power over various categories of cases, including, *inter alia*, cases “arising under” federal law and those between citizens of diverse states. In implementing and authorizing federal court jurisdiction, however, the current incarnations of Title 28 of the U.S. Code and the Federal Rules of Civil Procedure more liberally grant jurisdiction over one of these two major categories than the other.

In contrast to our nation’s first century, which of these two types of subject matter jurisdiction is favored by our laws today? Identify at least three examples from the Judiciary and Judicial Procedure Code or FRCP illustrating this unequal treatment.
**Question 4**

Proposition 8, passed in November 2008, amends the California Constitution to “eliminate the right of same sex couples to marry in California,” which had been recognized by a recent California Supreme Court decision interpreting the state Constitution’s equal protection provisions. Plaintiffs—including same-sex California couples recently wed or desiring to wed, a California non-profit organization, and the City of San Francisco—sued the State of California and its various offices to invalidate Proposition 8. On November 19, 2008, the California Supreme Court issued an order granting review, consolidating three early cases, and directing the parties to brief three issues:

(1) Is Proposition 8 invalid because it constitutes a revision of, rather than an amendment to, the California Constitution? (see Cal Const., art. XVIII, §§ 1-4.)

(2) Does Proposition 8 violate the separation-of-powers doctrine under the California Constitution [by limiting judicial authority]?

(3) If Proposition 8 is not unconstitutional, what is its effect, if any, on the marriages of same-sex couples performed before the adoption of Proposition 8?”

Assuming the validity of original review of this case by the California Supreme Court, and that the claims are limited to the three issues to be briefed, can Defendants remove the case to federal court? Why or why not?

**Question 5**

If a plaintiff chooses to bring a shareholder suit in 2008 based on poor corporate governance against the Directors and Officers of a corporation incorporated in Delaware with its principle place of business in California, does the fact of ownership of shares of that corporation’s stock by a Director or Officer automatically provide the federal District Court for the District of Delaware jurisdiction over those individual defendants?

**Question 6**

True or False: “A Federal District Court will always have personal jurisdiction over an out-of-state defendant’s actions giving rise to a tort if it meets either the long arm statute of the state in which it sits or if it meets the International Shoe ‘minimum contacts test.’” Why?
PART II: ESSAY HYPOTHETICALS
(Suggested time: 120 minutes for four questions, totaling 105 points)

The following fact pattern applies to the last four questions. You should answer each question based on all the facts that appear before the question, but not facts that appear after the question.

In 2007 Harry Homeowner, a Georgia citizen, retired and began to plan his life’s dream to sail around the world. After several months of consultation with his financial advisor, Fred Fiscal, of “Fred & Ally’s Financial Services, Harry took out a line of credit and bought his dream boat. It was guaranteed by the equity in his modest suburban home in Brunswick, Georgia (S.D. GA), which he had luckily purchased a decade ago when real estate values in his area had begun a steady rise. Although Harry was hesitant to add this “boat loan” to his home mortgage, Fred promised him that “This market’s only going up!” and “For only a modest monthly fee, our ‘credit protection guarantee package’ means you’ll never have to pay more than you can.”

The Brunswick housing market’s descent into free fall in 2008 left few residents unscathed. Fred and Ally, partners in their family’s financial advising business as well as partners in marriage, divorced. Fred, who had always hated Georgia since moving there to take over his father-in-law’s small local firm, now abandoned the business, his home, and all his worldly possessions. He moved into his brother’s condo in Bozeman, Montana, and became a ski bum. As the sole remaining partner, Ally assumed complete responsibility for all of Fred & Ally’s Financial Services’ clients. Other than forwarding Fred’s personal mail to Bozeman, Ally cut off all contact with him.

Harry watched his retirement savings and home equity plummet, while demands for payment on his mortgage and the “boat loan” soared. Faced with financial ruin, he hired a lawyer who tracked down Fred and filed suit against him in the Montana state trial court in Bozeman, alleging three counts:

I. Fred committed common law fraud in misrepresenting to Harry the risks and details of the credit line for the “boat loan,” inducing Harry to take the loan and resulting in $75,000 in damages to him.

II. The 2008 Federal Foreclosure Relief Act also made Fred liable for Harry’s $75,000 in losses, as it expanded liability for equity loans—such as the “boat loan”—to financial advisors as well as lenders.

III. Fred breached the terms of an unrelated agreement to provide a free estate counseling session (“valued at $150!”) to Harry based on a random drawing of Harry’s business card from a jar at the Rotary Club in November 2007. Harry won that draw, but Fred moved to Montana without ever returning Harry’s many calls to schedule that meeting.

Harry’s attorney, who happened to own a vacation home in Bozeman, made timely personal service on Fred while riding up a ski lift at Bridger Bowl, in Bozeman, MT.
One week after service of the complaint and summons, Fred filed a Notice of Removal of the case in the Federal District Court for the District of Montana (D.MT). Six weeks after that, Harry filed a Motion to Remand with that court.

**Question 7** (suggested time – 20 minutes)

How should the District Court rule on Harry’s Motion to Remand and why? Discuss all plausible bases for and objections to the ruling.

Assume the case remains in the Federal District Court, D.MT. With Fred’s written consent, Harry files a First Amended Complaint to add Ally Fiscal, Fred’s ex-wife and business partner, as a defendant. Harry alleges that although he had never personally met Ally, as Fred’s business partner during all of the transactions at issue, she was jointly and severally liable for his losses on all three counts of the original Complaint. Again, Harry’s attorney delivered the proper papers himself, leaving them with the Office Manager at the offices of “[now] Ally’s Financial Services” in downtown Brunswick, Georgia. Ally was outraged when she read the Amended Complaint. She told her lawyer she didn’t want to “clean up Fred’s messes” anymore, and certainly won’t haul out to her ex-husband’s turf to litigate.

**Question 8** (suggested time - 45 minutes)

What motion(s) should Ally’s lawyer consider filing? Will they be successful and why? *(Do not address claims based on the substantive law of fraud, contract, 2008 Federal Foreclosure Relief Act, or joinder of parties under FRCP 19)*.

Meanwhile, Fred had filed a timely Answer to the Complaint in the District Court, D.MT. In it, he accurately alleged that although the Complaint had identified the exact loan giving rise to Counts I and II of the Complaint, it otherwise failed to provide any particulars of what exact statements, and at what dates and places, were the basis of Fred’s alleged liability for Counts I and II. Fred’s Answer thus moved to dismiss Counts I and II for failure to state a claim. The Answer also pled a counterclaim for $20,000 for Fred’s time and expenses advising Harry about the “boat loan” that Fred claimed Harry had never paid.

**Question 9** (suggested time - 10 minutes)

How should the Court rule on Fred’s motion to dismiss Counts I and II and why?

Assume some disputes between Harry and Fred proceed through discovery and trial. At trial, Fred presents no evidence of services or bills unpaid by Harry. After dismissing Fred’s counterclaim, the District Judge, after a procedurally proper show cause hearing under Rule 11(c)(3), ordered Fred and his attorney to each pay Harry $8,000 in attorney’s fees as a sanction for pleading the Counterclaim.

The judge concluded that Fred was liable under FRCP 11 and his attorney was liable under both FRCP 11 and 28 USC §1927. The judge tersely found that “No
evidentiary support supporting this counterclaim was entered into the record in over a week of trial. Fred Fiscal claims he was unable to obtain business records no longer in his possession, but months of discovery should be ample time for discovery against even a recalcitrant co-defendant.” The Judge concluded: “Fred Fiscal and his lawyer advanced a claim that never had any evidentiary support, and thus necessarily could not have been based on a reasonable investigation preceding the counterclaim.”

**Question 10** (suggested time - 30 minutes)

On appeal of this sanction by both Fred and his lawyer, how should the U.S. Court of Appeals for the Ninth Circuit rule and why? Consider the best arguments for both sides in your discussion. How would that ruling by the Court of Appeals enhance or impede procedural values generally?

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**END OF EXAMINATION**

Good luck on your remaining exams and enjoy your holiday!